

STATEMENT OF SELWA ROOSEVELT  
CHIEF OF PROTOCOL OF THE UNITED STATES

BEFORE THE COMMITTEE ON FOREIGN AFFAIRS  
SUBCOMMITTEE  
ON INTERNATIONAL OPERATIONS  
HOUSE OF REPRESENTATIVES

H.R. 3036

MARCH 30, 1988

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Mr. Chairman, members of the Committee, I am Selwa Roosevelt, Chief of Protocol. I appear here today with my colleague, Mr. John Condayan, who is Acting Director of the Office of Foreign Missions, pursuant to Chairman Mica's invitation to provide the Department of State's views on H.R. 3036, a bill "To provide redress for crimes committed by diplomats in the United States, and for other purposes."

With us are Ms. Joan E. Donoghue of the Office of the Legal Adviser, and Mr. William M. McQuade of the Office of International Organization Affairs.

As Chief of Protocol, one of my primary responsibilities is the accreditation of all diplomatic and consular officers as well as employees of foreign governments and of public international organizations in the United States. Their privileges and immunities stem from their accreditation. Also, Protocol deals with abuses of immunity, both criminal and civil, when they occur.

Let me begin by stating that we support, or do not oppose, sections 1, 2, 4 and most of section 3 of the bill. We do not see a need for section 6. However, the Department cannot

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support subsection (c) of section 3, and sections 5, 7, 8, 9 and 10. In our testimony today, we will explain the Department's positions on each of these sections.

I wish to point out that the Department has recently submitted to the Congress a study and report concerning the status of individuals with diplomatic immunity in the United States required by the Foreign Relations Authorization Act (Fiscal Years 1988-89), Section 137.

#### INTRODUCTION

During the last decade, the Department has been keenly aware of the need to monitor closely the granting of immunity and has taken steps to ensure that the degree of immunity extended to persons is commensurate with the need for immunity in performing duties on behalf of one's government.

In this regard, the Department participated with the Congress in the enactment of the Diplomatic Relations Act of 1978, which made the Vienna Convention on Diplomatic Relations the United States law governing the immunity accorded certain official representatives of foreign governments in this country. As a result of this legislation, the degree of immunity accorded diplomatic mission personnel is based upon

the position of a member of the mission and upon the nature and sensitivity of his work and the corresponding need for the individual and, in some cases, the members of his family to be protected from local jurisdiction.

Where the United States Government has deemed it to be beneficial, the President has used his authority under the Diplomatic Relations Act to conclude treaties providing on a reciprocal basis greater immunities for the personnel of the sending State.

Immunity is essential to the conduct of diplomatic relations. It protects almost 30,000 Americans and their families posted overseas. At times this may be in conflict with the duty to protect American citizens in the United States from harm. We believe it is difficult, if not impossible, to resolve these conflicting concerns in all cases. We wish to emphasize to Congress that protection of our employees abroad must not be sacrificed through imposition of measures reducing immunity in the United States which may invite reciprocal actions abroad.

The Vienna Convention does impose a clear obligation on those entitled to immunity to respect the laws of the receiving State. Nonetheless our laws sometimes are violated by persons

with immunity. The United States Government does not condone these abuses of immunity, but we believe we should continue to abide by our obligation under international law to accord immunity in those rare cases where abuses of immunity occur.

Nevertheless, there are measures which are available to us, and since the passage of the Diplomatic Relations Act the Department has taken steps consistent with the provisions of the Vienna Convention to deal with offenders.

A summary of a number of these steps was set forth in testimony which I delivered before the Senate Foreign Relations Committee on August 5, 1987, in connection with S.1437. A copy of that testimony has been made available to this committee. We believe that the bill before us provides, in general, a useful framework for further measures.

I am prepared to discuss sections 2 through 7 of this bill, and Mr. Condayan will discuss sections 8, 9 and 10.

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At the outset, let me offer several general observations. In many places, the bill makes amendments to the Foreign

Missions Act of 1982 and delegates to the Director of the Office of Foreign Missions certain responsibilities. As many of the functions mandated by the proposed legislation fall within the purview of offices other than the Office of Foreign Missions, including my own, we urge Congress to grant these functions generally to the Secretary of State so that he has the ability to delegate these responsibilities as he deems necessary and appropriate. In addition, where certain functions are more closely related to the subject matter of the 1978 Diplomatic Relations Act, we suggest that they be set forth as amendments to that law.

We also note that H.R. 3036 uses throughout the bill the phrase "an individual with immunity from the criminal jurisdiction of the United States under the Vienna Convention." This term does not adequately characterize the full range of persons that we believe Congress intended to cover in this legislation. Not only do diplomats and certain other types of diplomatic personnel have immunity from criminal jurisdiction, but under bilateral and multilateral agreements, and customary international law, certain other personnel are also entitled to this immunity. Thus, we recommend amending this definition to so provide.

The Department believes that the term "serious criminal offense" should be limited to crimes of violence as defined in U.S. law, perhaps including those offenses involving serious personal injury. The Department also believes that the application of this proposal should be limited to situations where there is evidence substantiating the charges.

#### SEC. 6. REVIEW OF UNITED STATES POLICY ON DIPLOMATIC IMMUNITY

In regard to section 6, we believe there is no need for such a section in this legislation.

As we have noted, pursuant to the Foreign Relations Authorization Act (FY 1988-89), Sec. 137, the Department has already submitted to the Congress a study and report concerning the status of individuals with diplomatic immunity in the United States which we believe fulfills the spirit of section 6 of H.R. 3036. This exhaustive study and report represents the concerted view of numerous Department offices and covers certain issues set forth in the legislation, including:

- A study of the minimum liability insurance coverage required for members of foreign missions and their families;

- Collection of debts of foreign missions, mission personnel and their family members;
- Serious criminal incidents involving persons entitled to immunity;
- Education of law enforcement personnel in the area of diplomatic immunity;
- The extent to which the Department is able to identify diplomats involved in crimes so as to remove them from the United States and the extent to which existing law may be inadequate to prevent readmission of such individuals under other nonimmigrant and immigrant categories; and
- Examination of the considerations in establishing a fund for compensating the victims of crimes committed by persons entitled to immunity from criminal prosecution, including the feasibility of establishing an insurance fund financed by foreign missions.

Secondly, the privileges and immunities accorded foreign diplomats and members of their families are derived for the most part from the Vienna Convention on Diplomatic Relations. However, as provided in the Diplomatic Relations Act of 1978,



on the basis of reciprocity, and under terms and conditions which he may determine, the President may specify privileges and immunities for members of the mission, their families, and the diplomatic couriers of any sending State which result in more favorable treatment or less favorable treatment than is provided under the Vienna Convention.

The United States Government has entered into bilateral agreements with the People's Republic of China and the Union of Soviet Socialist Republics on a reciprocal basis providing for greater immunities for staff level personnel at their embassies. We also have entered into agreements with China, the Soviet Union, Poland, Hungary and the Philippines, all of which currently maintain consulates in the United States, as well as with Bulgaria, Czechoslovakia, the German Democratic Republic, and Romania, providing greater immunities for consular personnel and members of their families.

This granting of privileges and immunities more favorable than the treatment required under international law is limited and done only on a reciprocal basis, where, in our judgment, higher levels of privileges and immunities are needed to ensure the effective functioning of U.S. missions in those States. Of course, treaties of this nature have the approval of the Senate.

SEC. 2. COMPENSATION FOR VICTIMS OF CRIMES COMMITTED BY  
DIPLOMATS.

The Department supports section 2, which would provide compensation for victims of crimes committed by diplomats.

The Department believes that it is the responsibility of perpetrators of crimes and their governments, in the first instance, to compensate victims. For its part, the Department of State makes a great effort to secure such compensation and has been involved in securing ex gratia payments by foreign governments to injured parties.

We believe that this practice should continue, and the U.S. Government should look to other sources of compensation for victims only when it is clear that the foreign government or an individual is unwilling to compensate the victim and other sources of relief which might be available have been exhausted.

Nevertheless, the beneficiary of diplomatic immunity fundamentally is the United States Government because United States diplomatic personnel abroad could not function without immunity. Thus, uncompensated crimes are a necessary cost of the conduct of foreign relations, and it is reasonable for the United States Government to bear this cost.

**SEC.3(a). CRIMES COMMITTED BY DIPLOMATS--Records**

We support the record-keeping and reporting requirements envisioned in subsection 3(a), and are prepared to provide such a report to Congress.

We already maintain records regarding immune personnel who are alleged to have committed serious offenses, and believe that sharing this information with Congress is appropriate in connection with Congress' oversight function and because it may help deter future offenses.

Accordingly, we propose that the Department of State submit an annual report concerning serious criminal offenses committed in the United States by individuals entitled to immunity from criminal jurisdiction.

In addition, we propose the inclusion of delinquency in the payment of debts owed by foreign missions and members of such missions and their families to individuals and entities in the United States that have been pending with the Department for six months or more.

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We would be happy to work with the Congress to develop a reporting requirement which would assist the Department in resolving such cases.

SEC.3(b). CRIMES COMMITTED BY DIPLOMATS--Education and Encouragement of Local Law Enforcement Individuals

As regards subsection 3(b), we agree that education of local law enforcement officials is essential in preventing abuse of immunities. We are pleased that Congress shares this interest and support its efforts to do more in this area. We have discussed this area extensively in our report, so permit me simply to highlight several important points.

We recognize the importance of assuring that law enforcement officials fully investigate, document, charge and prosecute foreign mission personnel or their families to the extent consistent with the Vienna Convention. Improved education is the key to ensuring this. Law enforcement officials need to understand both what can be done to deal properly with those with immunity and the importance of thorough investigation and reporting in incidents of crime allegedly committed by persons with diplomatic immunity.

In March 1987, the Department published updated, more comprehensive, written guidance for law enforcement officers on the handling of incidents involving foreign diplomatic and consular personnel. Since then about 25,000 copies of this document have been distributed nationwide to federal, state and local law enforcement authorities. A second printing is in progress in order to meet the demand.

In addition, the Department of State's Bureau of Diplomatic Security has developed a training seminar on the subject to further educate law enforcement officials. The seminars are conducted in conjunction with the Office of Protocol and the Office of Foreign Missions.

Through this process, we have sought to make law enforcement personnel aware of the varying degrees of immunity and emphasize the importance of prompt reporting to the Department of State of criminal offenses allegedly committed by persons with diplomatic immunity and of carefully documenting such incidents in accordance with normal police procedures to ensure that the charges are well-founded and to help us seek a waiver and compensation for the victim.

In this regard, I should also like to point out that in order to be effective in this pursuit, we will have to have the cooperation of victims as well, who must be willing to press charges and testify in these cases.

SEC.3(d).        CRIMES COMMITTED BY DIPLOMATS--Notification of  
Diplomatic Corps

We support subsection 3(d).

The Department makes every effort to notify the diplomatic community of its policy concerning criminal offenses committed by its members. For example, a recent circular diplomatic note dated September 21, 1987, advised the diplomatic missions of U.S. Government policy in this regard. The Department stated emphatically that criminal violations would not be tolerated by the United States Government or the community at large and summarized the corrective measures consistent with international law that are taken in cases involving serious criminal conduct, in particular crimes of violence, recurrent offenses of a less serious nature, or other egregious abuses of immunity.

The Department reiterated that it requests a waiver of immunity by the sending State so that all allegations may be adjudicated fully. In the absence of a waiver in a serious case, the United States requires that the alleged offender depart the country. In certain cases, the Department would retain discretion to require the departure of an offender even though a waiver of immunity may have been granted.

When such cases involve dependents, the Department may require the removal of the principal from whom privileges and immunities are derived, plus members of the family when the sending government declines to waive immunity or the Department determines that such action is necessary or appropriate.

The Department advised further that in all cases involving injury to person or property, it pursues vigorously the interests of the aggrieved parties in obtaining prompt restitution by individual offenders or by their governments.

The Department also stated that in order to ensure a complete record in each case, or to lay the basis for possible prosecution in appropriate cases, it had notified law enforcement officials throughout the United States to prepare cases carefully and completely and properly document each incident at the time of an alleged crime so that charges

against offenders may be pursued as far as possible in the U.S. judicial system. To ensure that individuals do not return without appropriate review by United States authorities, the Department advised that it requires that the sending government forward the passport of the offender (and of family members in appropriate cases) to the Department before he or she departs the United States so that the visa may be revoked and the form I-94 returned to the Immigration and Naturalization Service. If the offender leaves the United States before the visa is cancelled, the Department has stated that it may not accept a replacement on the mission staff of the offender (or of his or her principal in the case of a crime committed by a dependent), until the visa is revoked.

We would be happy to update and reissue such a communication in accordance with this legislation.

As an additional measure, we are distributing copies of the recent report which we prepared for Congress pursuant to the Foreign Relations Authorization Act to all of the embassies in Washington to further inform them and their governments of our policy in these areas.



#### SEC. 4. REGISTRATION AND DEPARTURE PROCEDURES FOR INDIVIDUALS WITH DIPLOMATIC IMMUNITY

The Department believes that current procedures satisfy Congressional concern as expressed in section 4 regarding registration and departure procedures. We therefore do not oppose enactment of this section.

The Department's registration process requires that for every person appointed as a diplomat or staff member of an embassy, or consular officer or employee, the foreign mission must file the proper Department of State notification form.

Accreditation officers review all these forms for consistency with the criteria. When questions arise cases are brought to the attention of superiors, and if further consultation is necessary, they are reviewed by the Accreditation Review Panel, which functions under the co-chairmanship of the Office of Protocol and the Office of Foreign Missions and includes representatives of other interested offices.

Once the review process has been completed, all pertinent data are entered in the computerized record system, which makes the information instantly retrievable for individual name

checks and quickly available for personnel listings both in Protocol and in the United States Mission to the United Nations (USUN).

Additions and changes to accreditation and registration records, such as promotions, transfers, terminations, name changes, and the births of dependents, are all entered into the database. These changes are contemporaneously made in master copies of the current issues of three publications: the "Diplomatic List," "Employees of Diplomatic Missions," and "Foreign Consular Offices in the United States." The first two are brought out on a quarterly basis; the third, twice a year. The entry into the database of all accessions and terminations has made it possible for Protocol to receive each week printouts of the cumulative changes in these two categories for both diplomats and employees, by country, since publication of the latest lists, which form an important addition to the materials provided in duty officer kits.

Concurrently with being entered into the computer, termination notices precipitate the transfer of diplomats' and employees' hard-copy records from active to inactive files, where they are maintained in Protocol until permanent retirement.

The Office of Host Country Affairs at the U.S. Mission in New York is responsible for the registration and documentation of members of permanent missions to the United Nations. It is also responsible for the registration and documentation of the Secretary-General and all Assistant Secretaries-General of the United Nations.

The UN registration system differs from that of the Office of Protocol because the United Nations is the accrediting agency. Therefore the UN missions submit the notification forms of new members to the UN Protocol Office, which determines whether UN accreditation criteria have been met. USUN puts out a semiannual publication, "Permanent Missions to the United Nations," which lists the officers of each mission entitled to diplomatic privileges and immunities. A master copy of that publication reflecting all terminations, additions, and other changes is kept current by USUN, forming the basis of the next issue.

State Department officers are available 24 hours a day to confirm the status of anyone claiming immunity.

Recently developed photo I.D. cards, with distinctive color-coded borders and language indicating the level of immunity of the bearer as well as 24 hour contact numbers for

inquiries, are now being issued to members of the diplomatic communities in Washington and New York, replacing the old-style identification documents issued over the years.

Upon departure, diplomatic personnel are required to fill out Form DS-1497a, "Notice of Departure of Foreign Diplomatic Officer," and submit the form to the Office of Protocol. Similarly, other government personnel are required to fill out Form DS-394a, "Notice of Termination of Employment with a Foreign Government," and submit it to the Office of Protocol. Identification cards are returned with these submissions. The Department is closely examining methods of improving these procedures and, among other things, plans to devise a system whereby all credentials as well as license plates will be returned to the Department with the termination forms.

The United Nations requires members of permanent missions who are leaving to file a form entitled "Notification of Final Departure of Members of Permanent Missions to the United Nations," and submit the form to the United Nations Protocol Office. The information from these forms is compiled by the U.N. and submitted to the U.S. Office of Host Country Affairs twice monthly.

**SEC.5. WAIVER OF DIPLOMATIC IMMUNITY WHEN CHARGED WITH A  
SERIOUS CRIME--Waiver**

The Department welcomes the expression of the sense of the Congress set forth in subsection 5(a).

As previously noted in testimony regarding subsection 3(d), the Department often requests waivers of immunity so that all allegations may be adjudicated fully. Nonetheless, we are sure that the Congress recognizes that the Department must retain some flexibility in these situations as waivers are not always appropriate.

A recent case illustrates that a waiver of immunity is not always in the interest of the United States. A dependent, mentally ill son of a diplomat escaped from the institution where he had been committed by his mother. He was caught in the course of molesting a child. In this case, the Department believed that the family member and the principal had to leave the country in order to protect the safety of U.S. citizens, to avoid institutionalization at the taxpayers' expense, and to ensure that the dependent would not come back to visit the principal.

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As a point of information, however, we note that under Article II, section 3 of the Constitution, the ability to accept Ambassadors and other public Ministers is vested exclusively in the President. This ability includes a determination of who is and who is not a member of a foreign mission, and therefore includes the declaration that an official is non grata and therefore no longer a member of a foreign mission.

SEC.5. WAIVER OF DIPLOMATIC IMMUNITY WHEN CHARGED WITH A  
SERIOUS CRIME--Communication to Immigration and  
Naturalization Service

We support subsection 5(b).

Since 1983, the Department has had in place a similar procedure whereby the Visa Office notifies the central office of the Immigration and Naturalization Service for entry into its lookout system of the name of each individual who voluntarily leaves, or is asked to leave, the United States because of that individual's alleged involvement in a serious crime, in order to prevent that person from reentering the United States. Entries remain in the INS lookout system until the subject's seventieth birthday.

**SEC.5. WAIVER OF DIPLOMATIC IMMUNITY WHEN CHARGED WITH A  
SERIOUS CRIME--Exclusion of Aliens Previously Involved  
in Serious Crimes Committed in the United States**

The Department objects to subsection 5(c) which would amend the Immigration and Nationality Act (INA) to add a new exclusionary category. Currently we have administrative procedures which we believe address the concern.

If an alien entitled to immunity allegedly commits a criminal offense or some other act which causes the U.S. Government to request his or her departure from the country, the visa revocation procedure, instituted pursuant to Section 221(i) of the INA, is initiated. Under this procedure, the Office of Protocol notifies the Visa Office and requests that the visa be revoked, that the alien's name be entered in the visa lookout system, and that the Immigration and Naturalization Service (INS) be informed. If for some reason the passport cannot be obtained for physical cancellation of the visa before the alien departs the U.S., appropriate consular posts are instructed to cancel the visa physically. If the visa is not physically cancelled in the U.S. or abroad, the information in INS' lookout system will result in the denial of the alien's readmission to the country in "A" visa status at some later date.

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If the alien has allegedly committed a criminal offense, a warrant may have been issued for the alien's arrest. This information is available in the visa lookout system to consuls, who are then in a position to inform the alien and discourage him or her from traveling to the U.S. If the alien persists and is otherwise qualified for a visa, the consul can limit the visa to conform to the alien's specific travel plans and have the appropriate law enforcement agencies notified. The alien could then be apprehended upon arrival in the U.S.

Thus, the Bureau of Consular Affairs, as the entity charged with administration of this program, believes the present procedures in place for exclusion of aliens are adequate to meet the purpose and intent of this subsection.

**SEC.3. CRIMES COMMITTED BY DIPLOMATS--Interference With Local Prosecutions**

The Department believes that subsection 3(c) concerning local prosecutions creates an unwise and unmerited restriction. It would be troublesome and mischievous. We cannot support this subsection.



We are concerned about this provision's ban on "influence" by the Executive Branch. As worded we believe it may be intended or construed to ban all Executive Branch contact with state or local prosecutors.

Obviously, it is not the policy of the federal government to bring undue or inappropriate pressure on state or local governments in connection with investigations or prosecutions of foreign persons. Nonetheless, in cases when a state or local government investigation or prosecution has foreign policy implications, the Executive not only has a right, but a duty, to communicate those implications to the appropriate state or local authorities. To the extent that this provision would limit such communications, and we note it is somewhat ambiguous, it would be unconstitutional. Nor is the constitutional infirmity posed by this section cured by the limited waiver authority granted to the Secretary.

Such a restriction would have a chilling effect on members of the Department, many of whom are required to have frequent contact with law enforcement authorities.

We note recently that a local prosecutor called upon our Legal Adviser's Office for assistance in a case where a defendant was improperly asserting immunity. Without our assistance in this often arcane area of the law, the prosecutor may not have been able to brief the matter properly.

In another example, in a case involving espionage, a U.S. District Court improperly found a foreign government official immune, and the State Department had to intervene on appeal to establish that he did not have immunity.

Thus, there well may be occasions in which the interests of the United States would be best served by communications from the State Department to a state or local government about a criminal proceeding against an alien. The Department has an obligation to provide factual data to law enforcement authorities with regard to immunity or inviolability. The Department cannot be silent if asked about an individual's immunity.

This prohibition on interference may also invite review of sensitive Department decisions affecting foreign policy by the U.S. Attorneys or investigators from other agencies.

While the Bill provides for a waiver by the Secretary to allow such communication, the waiver procedure would be time-consuming and burdensome.

The Department currently has internal guidelines governing contact between Department officers and law enforcement officials. The Department has established the policy that

where a foreign official or the relative of such an official is charged with a crime and is not entitled to immunity from arrest or prosecution, whether and how the Department should intervene based upon policy considerations would be decided after discussion between the Office of the Legal Adviser and the concerned bureaus. Communications with law enforcement authorities generally are handled by the Office of the Legal Adviser. Differences between the bureaus are resolved by the Under Secretary for Political Affairs in consultation with the Under Secretary for Management.

**SEC. 7    REVIEW OF PROCEDURES FOR ISSUING VISAS TO DIPLOMATS TO  
          THE UNITED STATES AND UNITED NATIONS**

As regards section 7, the Department believes that a Congressionally mandated review of procedures for issuing visas to diplomats would not be necessary and we do not support this section.

As nations already tend to reciprocate in their treatment of diplomats, it is the Department's experience that the procedures for processing the equivalent of A visas for United States diplomats by foreign nations are the same as or similar to the Department's procedures. The generally accepted international practice for the issuance of diplomatic visas is

for the sending State to submit to the embassy of the receiving State a diplomatic note which identifies the diplomat and the purpose and length of his or her assignment. These notes are generally accepted as honest statements of fact. Accompanying the note is the applicant's passport and, on the basis of reciprocity, a completed visa application form and photo. The same procedures apply to family members who either travel with or follow to join the diplomat.

In the future, should the procedures imposed by other countries in issuing diplomatic visas diverge substantially from U.S. practices, the Department would, of course, be free to amend the practices to ensure reciprocity.

Should this section remain a provision of the bill, however, the Department wishes to point out the positions of "Secretary of State" and "Attorney General" should be reversed, because the State Department is the primary agency responsible for visa issuance.

In closing, I wish to express my appreciation for this opportunity to present views on these matters. We welcome the Congressional interest in this area and look forward to working with you in making constructive changes.

My colleague, Mr. Condayan, will now continue with the Department's presentation.